

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA * CRIMINAL NO. H-08-237
*
VERSUS * Houston, Texas
* January 7, 2014
OSCAR NAVA-VALENCIA * 2:05 p.m.

SENTENCING
BEFORE THE HONORABLE EWING WERLEIN, JR.
UNITED STATES DISTRICT JUDGE

For the Government:

Mr. James Henry Sturgis
Office of U.S. Attorney
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McAllen, Texas 78501

For the Defendant:

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Court Reporter:

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Official Court Interpreter

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1 THE COURT: Court calls for sentencing No. 8-237,
2 United States versus Oscar Nava-Valencia.

3 For the United States.

4 MR. STURGIS: James Sturgis for the United States,
5 Your Honor.

6 THE COURT: Thank you, sir.

7 And for defendant.

8 MR. MOSBACKER: Mervyn Mosbacker for Mr.
9 Nava-Valencia, Your Honor.

10 THE COURT: Thank you, sir.

11 It's correct, is it not, that the defendant was
12 adjudged guilty of Count 1 of the indictment pursuant to a
13 plea of guilty made in connection with a plea agreement?

14 MR. MOSBACKER: That's correct, Your Honor.

15 THE COURT: And have you received and read and had
16 opportunity for your client to have read to him in Spanish
17 the presentence investigation report and discuss it with him?

18 MR. MOSBACKER: Yes, Your Honor.

19 THE COURT: I have received and read in connection
20 with this sentencing the presentence investigation report
21 from the probation office. I should correct that to say the
22 revised presentence investigation report dated September
23 14th, 2012, statement of the government at Document No. 55
24 that it has no objections, also a unopposed motion for leave
25 to file those, an announcement of no objections late, which

1 is at Document 56. That motion is unopposed; it's granted.

2 The defendant's objections at Document No. 44,
3 the defendant's sentencing memorandum, a number of letters,
4 includes a large number of letters from family members,
5 friends, others in support of the defendant and the addendum
6 to the presentence report from the probation office dated
7 September 14, 2012.

8 Are these all of the matters that have been
9 filed in connection with this sentencing?

10 MR. MOSBACKER: Yes, Your Honor.

11 MR. STURGIS: Yes, Your Honor. In connection with
12 the sentencing, that's correct.

13 THE COURT: All right. I will rule on the
14 objections then.

15 The government has none.

16 The defendant's first three objections or
17 clarifications are to paragraph 4, paragraph 11, paragraph
18 12. Paragraph 4's correction is agreed to by the government
19 and the probation office and is sustained.

20 Paragraph 11, clarification that the defendant
21 was involved only in the Cumepa or C-u-m-e-p-a transaction.
22 Of the four that are mentioned here, the government concurs
23 in that, although the government points out that the
24 defendant was involved in many other transactions. And that
25 is accepted insofar as distinguishing these four transactions

1 here in paragraph 11.

2 In paragraph 12, clarifying that the three
3 other named persons there are not part of a discrete group in
4 company with the defendant, which is accepted by probation
5 and the government and is accepted as clarifying data.

6 The fourth objection is to paragraph 14
7 objecting that the defendant was not involved in 1200
8 kilograms of cocaine first mentioned in this paragraph as to
9 1250 kilograms that were to be delivered to this defendant
10 that was he says owned by others to he received by this
11 defendant, divided up by this defendant. This ties in with
12 other references to other large quantities.

13 And the addendum to the presentence
14 investigation report adds lucid in clarification, it seems to
15 me, that the defendant Mora-Mondragon and others were jointly
16 engaged in jointly undertaking criminal activity, 1250
17 kilograms of cocaine, millions of dollars, I guess tens of
18 millions were to be received by this defendant. But he was
19 aware that this was only part of an even larger quantity of
20 the magnitude which turned out to be 3100 kilograms. While
21 he may not have known the details or exact numbers, he knew
22 that they were of magnitude, they were shipments of
23 comparable magnitude. This was not something where you ship
24 1250 kilograms and then a few grams of cocaine on the side or
25 something. These are big, major shipments.

1 And so, while the defendant undertakes to
2 minimize and avoid responsibility, it appears, for relevant
3 conduct and while he is held only for 1250 kilograms,
4 nonetheless he is also held accountable, may be held
5 accountable for the entire transaction, knowing as he did
6 that this was a part of, as he acknowledges, an even larger
7 transaction, and 3100 kilograms is certainly proportionate to
8 the amount that he, himself was to receive. That objection
9 is denied with the words of clarification.

10 The fifth objection is to paragraph 15, and the
11 sixth objection is to paragraph 16. Both of these, once
12 again, are stating that the defendant did not participate in
13 or was not aware of shipments of, in paragraph 15, 400
14 kilograms of cocaine mentioned there in 16, 1500 kilograms
15 mentioned there. This is sustained as to the details of him
16 having detailed knowledge, that is to say, of the specific
17 quantities and amounts on these transactions. But to the
18 extent the implication of the objection is to suggest that
19 the defendant was not aware that additional quantities of the
20 size and magnitude that he and others were engaged in, the
21 objection will be denied.

22 Paragraph, the seventh objection is to
23 paragraph 17 objecting that the defendant knew that another
24 1850 kilograms of cocaine was to be shipped along with the
25 1850, this is discussed before. Defendant was, as he says,

1 not specifically aware of the amount of exactly 1850
2 kilograms until the entire combined load was stolen or seized
3 in Panama. He says that's when he found out it was 3100.
4 But he knew that his 1250 kilograms were in another major
5 shipment, part of a major shipment. And, therefore, he is
6 held responsible for this, as we already discussed, although
7 the Court will accept his statement that he may have not
8 known the exact size, but he did know that there was a very
9 large shipment of which his own 1250 was a part.

10 MR. MOSBACKER: Your Honor, may I clarify something?
11 And I just don't believe it refers to the previous two
12 paragraphs, paragraph 15 and 16 and to Mora-Mondragon's
13 enterprise in general.

14 Just to clarify, Mora-Mondragon was not part of
15 my client's group. He was an independent shipper
16 essentially. He found a way to ship cocaine from Colombia to
17 Panama and Central America and then from Panama and Central
18 America to Mexico. He contracted his services essentially on
19 the 1250 load. So as to those two loads that I refer to in
20 paragraphs 15 and 16, those were completely separate
21 shipments that Mora-Mondragon undertook for other people not
22 related to my client's group. That's what I wanted to
23 clarify.

24 THE COURT: And I acknowledge that he did not know
25 the details of those. But he knew that this man is in the

1 business of shipping these big loads.

2 MR. MOSBACKER: Yes, Your Honor.

3 THE COURT: I mean, that's why he's in business with
4 him and dealing with him --

5 MR. MOSBACKER: That's correct, Your Honor.

6 THE COURT: -- to deliver tens of millions in
7 cocaine. So this is not surprising to the defendant,
8 although the defendant may not have none of the particular
9 shipments. All right. I will accept that.

10 MR. MOSBACKER: Yes, Your Honor. It was just a, I'm
11 sure, Mr. Mora-Mondragon's business practice not to inform
12 everybody who he was shipping cocaine for.

13 THE COURT: Right. But if he was going to tell
14 anyone, he would have told your client probably.

15 MR. MOSBACKER: Oh, I don't think so, Your Honor.

16 MR. STURGIS: That's probably not necessarily true,
17 Your Honor.

18 MR. MOSBACKER: Their relationship was not that
19 great.

20 THE COURT: All right.

21 The next objection, No. 8, to paragraphs 20 and
22 21 clarifying that Mora-Mondragon told the defendant's
23 associate Guzman of the loss of the Cumepa load; and that's
24 accepted as additional information, and objecting that
25 Mora-Mondragon had paid for the loss.

1 The PSR actually says in paragraph 21, I
2 believe, that he paid a portion of the loss and does not say
3 that he had paid for all of the loss or paid for the loss
4 without that qualification. This does not affect the
5 guidelines in any event.

6 MR. MOSBACKER: No, Your Honor.

7 THE COURT: All right.

8 Paragraph 22 is for the next objection lodged.
9 This would be Objection No. 9, clarifying that the defendant
10 declined to invest in a load of cocaine to be shipped to
11 Italy, which load was seized. The defendant had no loss, but
12 he clarifies that the meeting held by those who are engaged
13 in this business that the defendant was engaged in in
14 shipping large loads of cocaine was held not in the
15 defendant's own home but rather in the defendant's office
16 space when the counsel or whoever it was gathered in the
17 meeting determined that Bruno should be held responsible for
18 the loss, Bruno being the individual who has been since
19 missing and whose body has never been found. And that's
20 accepted as clarifying information with respect to where the
21 meeting was held and ended up focusing on Bruno before his
22 disappearance.

23 The 10th objection is to paragraph 23,
24 objecting that the defendant had no participation in the
25 violent conduct described in this particular paragraph, and

1 also paragraph, next objection is to paragraph 24 which
2 describes other activity and the kidnap and ultimate murder
3 of the individual as a result of him not paying the drug
4 trafficking taxes. I will sustain those objections in as
5 much as I don't believe there's any evidence that has been
6 presented in the PSR to tie this defendant to those
7 particular acts of violence.

8 The 13th objection to paragraph 26, this is the
9 relevant conduct assessment. Once again, this restates the
10 argument made that the defendant did not know the exact
11 number of cocaine, kilos of cocaine to be delivered in this
12 big shipment in which he was to receive 1250 kilos himself,
13 and objecting to be held responsible for the entirety of
14 that.

15 It's acknowledged, he's acknowledged that he
16 knew that his was only a part of the total shipment. And the
17 additional 1850, while he may not have known the exact number
18 of kilos, the combined load certainly was of the magnitude
19 that he could have reasonably expected and reasonably
20 foreseen would be involved. And he did have knowledge of the
21 fact there was other cocaine. So that objection is denied.

22 Actually I think that the defendant -- you
23 know, the quantities we are talking about are way above the
24 top quantity in the drug table, which ends at 150 kilos or
25 more. So when you get into quantities in the thousands, 1250

1 or 3,000, you're many, many times above what the top level is
2 in the drug table of the sentencing guidelines. In any
3 event, that objection is denied.

4 The 14th objection is sustained and it's been,
5 I think, acknowledged now that the defendant is allotted a
6 three-level credit for acceptance of responsibility.

7 The 15th is a computation objection based on
8 that. It's sustained for the same reasons.

9 The 16th objection is to paragraph 83.
10 Actually it's now, I think in the revised PSR, paragraph 84
11 objecting to the grounds that have been set out for upward
12 departure. I will accept that as argument, but it's
13 properly, the subject matter is properly there and does, in
14 the opinion of the Court, set forth the grounds for possible
15 upward departure as the guidelines do recognize.

16 Have I ruled on all the objections now?

17 MR. MOSBACKER: Yes, Your Honor.

18 MR. STURGIS: Yes, Your Honor.

19 THE COURT: Then based upon the revised presentence
20 investigation report and the addendum thereto, which I adopt,
21 I find that the total offense level is 39, criminal history
22 category is 1. The recommended period of incarceration under
23 the advisory guidelines is from 262 to 327 months.

24 Very well. Mr. Mosbacker, do you wish to make
25 a statement on behalf of the defendant?

1 MR. MOSBACKER: Your Honor, I believe the government
2 and I would like to approach the bench.

3 THE COURT: Very well.

4

5 (Conference before the bench)

6

7 MR. STURGIS: Your Honor, I believe that Mr.
8 Mosbacker -- and this is joined by the government -- would
9 like to re-urge the defendant's motion for continuance. It
10 is a sealed motion, which the Court respectively denied.

11 The reason that the government joins in this
12 motion is that the defendant currently, as the Court may be
13 aware of in the motion, that the defendant has debriefed on a
14 number of subjects. One of the subjects that the defendant
15 has debriefed on is with a particular person who has been
16 extradited to the District of New York. The defendant has
17 provided information to the government in which to originally
18 bring the charges, but the totality of it is that that
19 defendant is set for pretrial in two to three weeks, I
20 believe.

21 The agents and the prosecutors up there have
22 asked the government down here, which the government joins
23 in, asking for more time to determine whether or not there is
24 going to be a trial in that case. Obviously the government
25 feels that the defendant may have earned some credit; but the

1 government is in a predicament in offering some credit now
2 for helping originally, but in turn now they're coming back
3 to the Court again if he ends up testifying on a Rule 35 even
4 though it's the same production coming out of the defendant.
5 It's the same case.

6 There are also other events taking place in
7 which the defendant has attempted to cooperated, that the
8 defendant has attempted to cooperate on. One is the asset
9 forfeiture case which is being done out of the District of
10 Columbia which they're seizing property from other drug
11 dealers, they're international properties. There is also a
12 case which is stemming out of Chicago which the defendant has
13 debriefed on and is attempting to cooperate in that case. We
14 are currently trying to find out the status, whether or not
15 that defendant has been extradited to the United States or
16 not.

17 But going back to the original situation, and
18 now that the Court went through this entire PSI, and I think
19 we are in agreement with everything that the Court stated in
20 the PSI, the government is in this predicament, if you will,
21 in which we have the defendant which has cooperated from the
22 beginning, provided information. The information was what we
23 used to bring charges. Now that the target is in the United
24 States then we have the matter of weeks before we have the
25 situation in the Eastern District of New York where the

1 defendant may be a witness. So that's why the government
2 joins in the defendant's motion, which was urged by the
3 defendant previously and denied by the Court.

4 MR. MOSBACKER: Well, Your Honor, obviously we agree
5 with the government's request for or urging our own motion.

6 It is also I think to the government's benefit
7 and to the benefit of counsel for the defendant if the
8 defendant remains not sentenced and remains in the Federal
9 Detention Center where he is easily accessible by the agents
10 from the Eastern District of New York. We are going to do
11 follow-up interviews with the Assistant U.S. Attorney from
12 that same district and the trial attorney from DOJ. We are
13 all working on the same case. They have indicated they want
14 to interview him some more. There is other districts that
15 have indicated they still want to interview him. And for
16 counsel and for the defendant and I think for the government,
17 it's better if he remains in the Federal Detention Center
18 where he can easily access his counsel and also the
19 government can easily access him.

20 THE COURT: Now, we did go over all of this before
21 and items on here have come up. I am going to deny the
22 motion.

23 There is available to the prosecutor to file a
24 motion at a future time to this. And I think justice is not
25 served to linger on and on before we move. And so the

1 defendant will still have an opportunity for the government
2 to file a motion and provide it to the Court with additional
3 information. So it seems that certainly if there is
4 information that the defendant can provide, he can provide
5 this so that he can then enter it at some time in the future.

6 MR. MOSBACKER: I don't believe the Bureau of
7 Prisons controls that, Your Honor.

8 THE COURT: Well, the Bureau of Prisons does. It is
9 important --

10 MR. MOSBACKER: It does, Your Honor.

11 MR. STURGIS: I believe it does, Your Honor.

12 MR. MOSBACKER: However, in my experience they don't
13 take the recommendations from the government as to placement.

14 THE COURT: Well, I am thinking about the case. As
15 I understand we are talking about the next three or four
16 weeks. And often times they don't get assigned from the
17 detention center anyway in that time, so there are a number
18 of things.

19 So I am going to deny that objection. We can
20 put that on the mark.

21 MR. STURGIS: Your Honor, I think we can take steps
22 to try or attempt to have that done. I know in my experience
23 there have been a lot of times where the judgement, I think
24 if the judgment is done and they try to move it along, and
25 the judgment takes a few days, then it may take a month, as

1 the Court pointed out. So the government has no problem with
2 going through --

3 THE COURT: We don't know where he will be assigned
4 at this point.

5 MR. MOSBACKER: It just makes it less, Your Honor,
6 it makes it less accessible for him to see counsel.

7 Excuse me, Your Honor.

8 THE COURT: He is in Houston. The FDC is in
9 downtown.

10 MR. MOSBACKER: Well, it certainly is easier for
11 counsel to come to downtown Houston. I think it's easier for
12 him to access counsel.

13 We have been in communication with -- obviously
14 a whole lot of this is involved in Mexico. We have attended
15 I don't know how many interviews or debriefings by the
16 government. It's probably in the several tens of interviews.
17 He has been very cooperative. And I think the government is
18 satisfied he's provided accurate information concerning his
19 activities and the activities of others, and that's why I
20 think they are using him and intend to use him in the future
21 to make these cases.

22 THE COURT: Well, I have no objection to that, but I
23 feel that there are things that need to be addressed. But I
24 will deny the motion at this time and proceed with the
25 sentencing.

1 MR. STURGIS: We have discussed those options, Your
2 Honor. Counsel and I have discussed those options. It's
3 just a matter of timing, as the Court is aware.

4 THE COURT: Well, I understand. I will deny this
5 motion.

6 MR. MOSBACKER: He came to this country in January
7 of 2011, so he has been --

8 THE COURT: He has been here quite a while.

9 MR. STURGIS: And he has -- I think this is
10 something that we wanted to bring to the Court's attention in
11 the way of -- and it may be more relevant under Rule 35 so
12 the Court gets the entire picture. But this defendant was
13 apprehended by the Mexican authorities not pursuant to the
14 U.S. government's effort, but he was apprehended and then
15 approached by the U.S. government agents about cooperating on
16 cases that appear.

17 The defendant through counsel informed the U.S.
18 agents and the government that he would not fight
19 extradition. He was concerned about that. And he has, since
20 he came to the United States, debriefed. In the government's
21 assessment he has been willing to cooperate. It's just a
22 long process, I am sure the Court is aware of, when you start
23 involving other districts, particularly the people from the
24 District of Columbia and New York, because they have a
25 different schedule, so that's been the delay. It has not

1 been delay on the part of the defendant and counsel or the
2 government here.

3 THE COURT: No. I understand that.

4 MR. MOSBACKER: Your Honor, some of the arguments I
5 would like to make at sentencing I don't feel comfortable
6 making in front of, in open court. But, yes, Your Honor, as
7 part of the sentencing memorandum, I included the fact that
8 his family has received threats, and he himself, obviously,
9 and that his family has, his immediate family had to flee
10 Mexico because of the particular threat; that the government
11 was gracious enough to give them temporary status in the
12 United States so they can avoiding being killed essentially.

13 He has had about 17 relatives of his in Mexico
14 killed, and that's part as a result of his absence; but more
15 so a result I think of the fact that by not fighting the
16 extradition, it was pretty obvious that he was going to be
17 cooperating with the United States government and that that
18 resulted in the acts of retaliation.

19 He has also provided the government with
20 avenues of doing proactive work in Mexico that to date have
21 not resulted in any concrete actions and force of actions,
22 but he has provided some individuals that were willing to
23 work with the government; and I think some of that may still
24 be in process, Your Honor. In other words, he has really put
25 himself out there as far as any type of drug organization in

1 Mexico, and he has done it at great risk to him and his
2 family. But he made a decision while still in Mexico that he
3 was going to cooperate with the U.S. government to the extent
4 that it was possible.

5 THE COURT: I understand. I have taken that into
6 consideration.

7 MR. MOSBACKER: It was 2009. And that was a mistake
8 on my part, Your Honor. He was arrested in 2009, October of
9 2009. And in January of 2010 I believe the government of the
10 United States, through the Mexican government, served him
11 with a warrant for extradition and filed the paperwork, the
12 actual extradition I think in April, 2010. So he's been --
13 he was in custody there.

14 THE COURT: He was arrested by the U.S.?

15 MR. MOSBACKER: No, Your Honor. The Mexican
16 authorities arrested him, subjected him to torture. He was
17 basically arrested by the army down there. He does have a
18 broken ankle that needs attending because the operations down
19 there were not a success, as a result of the questioning.

20 But he essentially, since January of 2010, it
21 would be our position that he would have been out in Mexico
22 through their process of basically logging out on these kinds
23 of cases but for the intervention of the U.S. government.
24 So I think since January of 2010 he was held at the request
25 of the U.S. government. And he made arrangements, as Mr.

1 Sturgis announced, to cooperate with the government through
2 speaking with some DEA agents who went to talk to him. They
3 couldn't debrief him down there because it's not secure, but
4 he certainly indicated that he wished to do that.

5 THE COURT: Do you have anything else to put on the
6 record?

7 MR. MOSBACKER: No, Your Honor.

8 THE COURT: I would ask that we have this motion as
9 well as this request to be carried under seal and kept in the
10 record.

11 MR. MOSBACKER: Yes, Your Honor. I appreciate it.

12 MR. STURGIS: Thank you, Your Honor.

13 THE COURT: All right. Thank you.

14

15 (In open court)

16

17 MR. MOSBACKER: May I have a minute, Your Honor?

18 THE COURT: Yes, certainly.

19 All right. Are you ready?

20 MR. MOSBACKER: Yes, Your Honor.

21 THE COURT: All right. Thank you.

22 Mr. Mosbacker, apart from what has been stated
23 at the bench, do you wish to make a further statement on
24 behalf of the defendant?

25 MR. MOSBACKER: Yes, Your Honor, I would.

1 My client, Mr. Nava-Valencia, as the Court has
2 recognized, has accepted his responsibility in this case. He
3 has done everything he could since his arrest in Mexico to
4 assist the officials in the United States with matters that
5 he could assist them with, Your Honor.

6 He is very repentant. He did write a letter to
7 the Court acknowledging his shame at having engaged in the
8 criminal conduct in which he engaged in and his basic vow to
9 work toward becoming a man that will be responsible and would
10 be able to conduct himself within the rules of society
11 through honest hard work.

12 To that end, as the Court is aware from our
13 submission, he has done everything to try to better himself
14 while in prison. He has attended whatever class he could.
15 He has gone out of his way to obtain correspondence courses
16 especially in the area of Biblical studies. He is vary
17 diligent in attending worship services and actually assisting
18 in those services in the detention center. And all of that
19 has been done with the goal of becoming a better man and
20 assuming the role of when he is eventually released as the
21 head of his family who will assist them in bettering their
22 life as well and living a good life.

23 His family is here today, Your Honor, both his
24 immediate and some extended family. His wife is living in
25 this country now with her children, largely due to the risks

1 that they are subject to in Mexico. They are becoming part
2 of the community. They attend church regularly. Actually
3 Mr. Nava-Valencia at one time lived on the border and
4 attended church in McAllen, the same church that they are
5 attending.

6 And the children are going to school. His
7 oldest son is attending classes at the University of Texas
8 Pan-American and making sure that he has a sufficient grasp
9 of the English language to proceed to a degree plan.

10 My client, Your Honor, has done everything I
11 think in his power to assist the government to the extent
12 that he could. He has an agreement with the government, and
13 we would ask that the Court consider the government's
14 request, which I believe has been made in the plea agreement,
15 and also we believe Mr. Sturgis will state, to sentence the
16 defendant at the low end of the sentencing guideline range
17 for which he has been assessed. We don't have any issue with
18 the guideline calculation, as we've indicated to the Court.

19 And we would also ask the Court to consider
20 reducing that by the amount of time he spent in Mexican
21 prison after the government of the United States served upon
22 him a warrant for extradition in January of 2010. He agreed
23 to come and eventually was brought to the United States in
24 January of 2011. So there was essentially 12 months, Your
25 Honor, that he served in a Mexican prison pending the

1 extradition request from the United States.

2 And I would also like the Court to take into
3 consideration, although the Court, obviously, and the
4 government had no control over, or has no control over it,
5 the basically horrible conditions of incarceration in which
6 he served in a foreign country, Your Honor.

7 We would ask the Court to consider all of those
8 things in assessing a sentence at the low end of the
9 sentencing guidelines, Your Honor.

10 THE COURT: All right. Thank you, sir.

11 Do you wish to make a statement in your own
12 behalf, Mr. Nava-Valencia?

13 THE DEFENDANT: Yes, Your Honor.

14 Before anything, Your Honor, I would like to
15 give thanks to God for the presence of my people that
16 survived. I'd like to ask forgiveness of Your Honor as
17 representative of this government, to this country, the
18 United States for my wrongs, Your Honor.

19 I also want to ask forgiveness of my daughter,
20 of my wife and my daughters who are here and my son and of
21 all my family for all the damage and for all they have been
22 through because of the cooperation in this situation we are
23 going through.

24 To Your Honor and all the citizens of the
25 United States, I ask them earnestly to forgive me. The truth

1 is that I wasn't fully aware of all the damage that I was
2 causing. What I want to do is to remedy my wrongs, Your
3 Honor, and be in a position also to contribute, to continue
4 helping this government of the United States. I want to ask
5 you to have consideration of me, Your Honor, and the
6 punishment that you will impose on me because besides me, my
7 family is going to suffer also because of my actions, Your
8 Honor.

9 That's all. That's all, Your Honor. I ask
10 forgiveness. I am repentant, fully repentant. Thank you for
11 your attention.

12 God bless you, Your Honor, and your family and
13 this country, the United States.

14 THE COURT: Thank you, sir.

15 Very well. Do you wish to make a statement for
16 the government, Mr. Sturgis?

17 MR. STURGIS: Nothing other than, Your Honor, that
18 we would ask that the Court follow the plea agreement that
19 has been presented to the Court.

20 As for the additional request of the defense,
21 we would leave that in the discretion of the Court concerning
22 the time that the defendant spent in a foreign, being
23 incarcerated in a foreign country.

24 What Mr. Mosbacher stated was correct. The
25 defendant was apprehended by the Mexican authorities on their

1 own accord. Subsequently he was served with the extradition
2 papers by the United States government. During that time I
3 cannot speak whether or not the Mexican government decided to
4 withdraw their charges based upon their own decisions or
5 whether or not it played into their considerations that the
6 United States government was taking an active role in
7 bringing the defendant to the United States. But during that
8 time the defendant did become aware of what was going on and
9 did represent to the government that he was willing to come
10 over and answer for the charges in the United States.

11 THE COURT: It is my understanding, though, that he
12 was arrested on charges brought by the Mexican government
13 against him.

14 MR. STURGIS: That is correct, Your Honor.

15 THE COURT: And he was held in Mexico on those
16 charges.

17 MR. STURGIS: That is correct, Your Honor.

18 THE COURT: Was he tried on those charges in Mexico?

19 MR. STURGIS: No, Your Honor. At some point in
20 time -- I do not know the exact date, but at some point in
21 time the Mexican authorities did drop their charges and
22 relinquish the defendant to the United States based on the
23 extradition.

24 THE COURT: All right. Thank you, sir.

25 I will state now the sentence the Court intends

1 to impose. I will permit any legal objections, if there are
2 any, before it is finally imposed.

3 In assessing this matter and assessing the
4 advisory guidelines with respect to the facts in this case, I
5 observe, as has been observed also in the presentence
6 investigation, in the revised presentence investigation
7 report that while the initial offense level in this case is
8 38 based on drug quantity, that is a guideline level that
9 applies to as few as 150 kilos of cocaine. In the instant
10 offense where the defendant has engaged in conduct and where
11 the relevant conduct points to at least 10 times that amount
12 and more, with the 3,100 kilos on this particular shipment
13 where he was to receive 1250 himself, the guidelines suggest
14 as one of the approved bases for upward departure that
15 consideration, that is to say, the enormous quantity of drugs
16 that this defendant was engaged in transporting, delivering,
17 receiving probably valued in the tens of millions of dollars.

18 The other factor that the advisory guidelines
19 suggest be considered is where there is evidence of violent
20 acts. And while the evidence is more limited with respect to
21 the defendant in this respect, he nonetheless was host in his
22 office for the discussions about whom should be held
23 responsible on one load that went down when it was determined
24 it was Bruno and subsequent to which Bruno has disappeared
25 and his body has never been found. And while the defendant

1 asserts that he had no responsibility there, those are the
2 kind of people that he was running with and dealing with,
3 those were his business colleagues.

4 After considering the advisory guidelines and
5 these factors that would warrant an upward departure, at the
6 same time considering the factors that have been argued by
7 defense counsel, it's the judgment of the Court not to make
8 an upward departure in the determination of the guideline
9 range but to take these kinds of factors, as well as the
10 other factors argued by defense counsel with respect to the
11 defendant's being held on Mexican charges for a year before
12 he was delivered to this country and the like, leading me to
13 conclude that a sentence within that guideline range of 262
14 to 327 months should be sufficient to fashion a sentence
15 sufficient but not less than necessary to achieve the
16 objectives of Section 3553(a). I will therefore sentence
17 within that guideline range and make the adjustments within
18 that range that the Court feels take properly into account
19 these factors that I have particularly mentioned as well as
20 others that are set forth in the presentence investigation
21 report and the addendum.

22 Pursuant to the Sentencing Reform Act of 1984
23 it's the judgment of the Court that the defendant Oscar
24 Nava-Valencia is hereby committed to the custody of the
25 Bureau of Prisons to be imprisoned for a term of 300 months

1 as to Count 1.

2 Upon release from imprisonment the defendant
3 shall be placed on supervised release for a period of five
4 years as to Count 1. Within 72 hours after release from
5 custody of the Bureau of Prisons the defendant shall report
6 in person to the probation office in the district to which
7 the defendant is released. While on supervised release the
8 defendant shall not commit another federal, state or local
9 crime, shall comply with the standard conditions that have
10 been adopted by this Court under General Order No. H1996-10,
11 will abide by any mandatory conditions required by law and
12 shall comply with the following additional conditions:

13 One, the defendant shall not possess a firearm,
14 ammunition, destructive device or any other dangerous weapon.

15 Two, if deported, the defendant is not to
16 reenter the United States illegally. If the defendant is
17 deported during the period of probation or supervised release
18 term, supervision by the probation officer becomes inactive.
19 If the defendant returns, the defendant shall report to the
20 nearest U.S. probation office immediately. Supervision by
21 the probation office reactivates automatically upon the
22 defendant's reporting.

23 Three, the defendant shall cooperate in the
24 collection of a DNA sample from the defendant if the
25 collections of such a sample is authorized pursuant to

1 Section 3 of the DNA Analysis Backlog Elimination Act of
2 2000.

3 It's further ordered that the defendant shall
4 pay the United States a special assessment in the amount of
5 \$100.

6 The Court finds that the defendant does not
7 presently have the ability to pay a fine within the guideline
8 range, advisory guideline range, and therefore the Court will
9 impose a reduced sentence in the amount of \$5,000.

10 Having assessed the defendant's ability to pay,
11 payment of the total criminal monetary penalty shall be due
12 as follows: Defendant shall make a lump sum payment of
13 \$5,000 due immediately, payments to be made through the
14 United States District Clerk, Southern District of Texas.
15 Any portion of the financial penalties that are not paid at
16 present will be due in accordance with the Bureau of Prisons
17 Inmate Financial Responsibility in an amount of not less than
18 50 percent of any wages earned in prison or \$25 per quarter
19 and upon discharge to supervised release will be due in
20 payments of 10 percent of gross earnings or \$250 per month,
21 whichever is the greater. Payments are to be made through
22 the United States District Clerk, Southern District of Texas.
23 Those payments, upon release of supervised release, shall
24 commence 60 days after release to supervision.

25 Is there any legal reason, other than those

1 already argued, why the sentence should not be imposed as
2 stated?

3 MR. STURGIS: Not from the government, Your Honor.

4 MR. MOSBACKER: No, Your Honor.

5 THE COURT: Then pursuant to -- yes, sir.

6 PROBATION OFFICER: Your Honor, is the total payment
7 that is due immediately \$5,100?

8 THE COURT: That would be \$5,100 when you add the
9 special assessment, that's correct.

10 PROBATION OFFICER: Thank you, Your Honor.

11 THE COURT: Thank you.

12 Then pursuant to the Sentencing Reform Act of
13 1984 the judgment of the Court as stated is imposed upon
14 defendant Oscar Nava-Valencia.

15 Now, Mr. Nava, you have the right to appeal
16 this matter unless you waived your right in the plea
17 agreement. I have not undertaken to review that aspect of
18 the plea agreement. Mr. Mosbacker will advise you of any
19 retained appeal rights that you may have. I will also give
20 to you this written notice of your appeal rights that you may
21 take with you, and a copy of this will be retained in the
22 Court file.

23 Let me say another word, too, Mr. Nava, since
24 you have a very fine family. I have read letters from wife,
25 children, family members. You and they need to know you are

1 not being punished because of your good family or because of
2 the good things that you may have done in having a good
3 family. You are not being punished for going to church or
4 studying and making these good achievements and courses that
5 you've taken in the Federal Detention Center. I commend you
6 on the good things.

7 The punishment comes because of the crimes, the
8 massive crimes that you've committed. And as these thousands
9 of kilos of cocaine work their way into this country through
10 your auspices and get out down through the chains of delivery
11 and out on the street to cocaine addicts and crack addicts,
12 they come before the Court, they don't have a good family,
13 they have broken homes, the children aren't cared for, they
14 commit crimes to support their habits. The devastation to
15 human beings and people and families and children goes on and
16 on and on. That's why you're being punished, to be in this
17 insidious crime in dealing in these massive loads of this
18 drug that has harmed so many other people and families and
19 children.

20 Is there anything further in this?

21 MR. STURGIS: Judge, the only thing left is the
22 government would make an oral motion to dismiss the remaining
23 count, which will be followed up by an electronically-filed
24 motion later this afternoon.

25 THE COURT: Your motion is for what?

1 MR. STURGIS: To dismiss the remaining count, Your
2 Honor.

3 THE COURT: The remaining count. That will be
4 granted. Thank you.

5 Is there a forfeiture in this, too?

6 MR. STURGIS: There was no forfeiture in this.

7 THE COURT: All right.

8 MR. MOSBACKER: Your Honor, if I could make a couple
9 of requests.

10 One, to ask that the Bureau of Prisons, or
11 recommend to the Bureau of Prisons that Mr. Nava-Valencia be
12 housed as close as possible to the Houston, Texas area in a
13 prison facility that's suitable.

14 And the other request, Your Honor, is made on
15 behalf of his wife, who was unable to come up and have a
16 regular visitation with him this Sunday because of some
17 mechanical problems. But she would request that she be
18 allowed to speak to him for a few minutes this afternoon,
19 Your Honor.

20 THE COURT: Well, I cannot grant the second request.
21 That is entirely up to the Marshal. You will have to deal
22 with the Marshal on that. I don't undertake to interfere
23 with their responsibilities on that.

24 And as for the first, I will make a
25 recommendation that over the period of the next -- that the

1 Bureau of Prisons not reassign the defendant from his present
2 place for at least 60 days for reasons that counsel for the
3 defense and the government will be able to explain to the
4 Bureau of Prisons. But I'd make that recommendation as an
5 accommodation.

6 As for any permanent assignment, though, I
7 won't make a recommendation because of all the many factors
8 they have to consider.

9 MR. MOSBACKER: Yes, Your Honor.

10 THE COURT: Anything else?

11 MR. STURGIS: No, Your Honor.

12 THE COURT: All right. That concludes this hearing
13 then. Thank you.

14 MR. STURGIS: May I be excused, Your Honor?

15 THE COURT: Yes. Thank you.

16 MR. MOSBACKER: May I be excused, Your Honor?

17 THE COURT: Yes. Thank you, sir.

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19

20 (Conclusion of proceedings)

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1 CERTIFICATION

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5 I, Fred Warner, Official Court Reporter for the
6 United States District Court for the Southern District of
7 Texas, Houston Division, do hereby certify that the foregoing
8 pages 1 through 32 are a true and correct transcript of the
9 proceedings had in the above-styled and numbered cause before
10 the Honorable EWING WERLEIN, JR., United States District
11 Judge, on the 7th day of January, 2014.

12 WITNESS MY OFFICIAL HAND at my office in Houston,
13 Harris County, Texas on this the 3rd day of May, A.D., 2022.
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17

18 /s/ Fred Warner
19 Fred Warner, CSR
20 Official Court Reporter
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